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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

NAYELI MENDEZ & HECTOR)	No. C 07-02544 VRW
MARTINEZ,)	
)	
Plaintiff,)	DEFENDANT'S ANSWER TO THE
)	COMPLAINT
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Defendant United States of America ("Defendant") hereby responds to the complaint for damages filed by plaintiffs Nayeli Mendez and Hector Martinez as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to Plaintiffs' residence.
2. Defendant admits only that Dr. Bannwart was a licensed physician and a deemed employee for purposes of FTCA coverage at all times relevant to this complaint.
3. Defendant admits the averments in paragraph 3.
4. Defendant admits only that Dr. Bannwart was a deemed employee for purposes of FTCA coverage at all times relevant to this complaint.
5. Defendant admits only that Plaintiff Nayeli Mendez received prenatal care at the Health Center, and further avers that Dr. Bannwart provided health care to Plaintiff Nayeli

1 Mendez and her son until the date of his birth. Defendant denies the remaining allegations
2 in this paragraph.

3 6. Defendant admits that Plaintiff Nayeli Mendez presented to Alta Bates Medical Center on
4 October 7, 2004. Defendant denies the averments in the second sentence of paragraph 6.

5 7. Defendant denies the averments in paragraph 7.

6 8. Defendant denies the averments in paragraph 8.

7 9. Defendant denies the averments in paragraph 9.

8 10. Defendant admits the averments in paragraph 10.

9 The next paragraph, beginning "Wherefore," contains Plaintiffs' claims for damages, to
10 which no response is required, but insofar as a response is required, Defendant denies the
11 averments in this paragraph.

12 All allegations not specifically responded to above are denied.

13 **FIRST AFFIRMATIVE DEFENSE**

14 Plaintiffs fail to state a claim upon which relief may be granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 Defendant United States, through its employees, agents, and servants, acted at all relevant
17 times with due care and diligence and therefore the United States did not breach any actionable
18 duty owed to Plaintiffs.

19 **THIRD AFFIRMATIVE DEFENSE**

20 In the event that Defendant United States is found negligent, which negligence Defendant
21 denies, such negligence is not the cause in fact or proximate cause of alleged damages suffered
22 by Plaintiffs.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 Plaintiffs accepted a known risk inherent in the treatment described in the Plaintiffs'
25 Complaint.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 The United States is not liable for attorneys' fees except as provided for by the Federal
28 Torts Claims Act. 28 U.S.C. § 2678. Plaintiffs are not entitled to a jury trial.

SIXTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2674, Defendant United States is not liable for interest prior to judgment or for punitive or special damages.

SEVENTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2675(b), Plaintiffs cannot recover more in damages than demanded in their administrative claim.

Respectfully submitted,
SCOTT N. SCHOOLS
United States Attorney

Dated: July 23, 2007

By: /s/
KATHERINE B. DOWLING
Assistant United States Attorney
Attorney for Defendant